

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FELICITY M. TODD VEASEY and
SECOND AMENDMENT FOUNDATION,
INC.,

Plaintiffs,

v.

BRINDELL B. WILKINS, JR., in his official
capacity as Sheriff of Granville County, North
Carolina,
PAT McCRORY, in his official capacity as
Governor of North Carolina,
ROY COOPER, in his official capacity as
Attorney General of North Carolina, and
FRANK L. PERRY, in his official capacity as
Secretary of the North Carolina Department of
Public Safety,

Defendants.

No. 5:14-cv-00369-BO

KIRSTEN MESSMER,

Plaintiff,

v.

DONNIE HARRISON, in his Official Capacity
as Sheriff of Wake County, North Carolina,
PAT McCRORY, in his Official Capacity as
Governor of North Carolina,
ROY COOPER, in his Official Capacity as
Attorney General of North Carolina, and
FRANK L. PERRY, in his Official Capacity as
Secretary of the North Carolina Department of
Public Safety,

Defendants.

No. 5:15-cv-00097-BO

**SHERIFF BRINDELL B. WILKINS, JR.'S AND SHERIFF DONNIE HARRISON'S
RESPONSE TO PLAINTIFFS' MOTIONS FOR ATTORNEYS' FEES**

ARGUMENT

AS STATE AGENTS FOR PURPOSES OF THIS LITIGATION, THE SHERIFFS CONCUR WITH AND INCORPORATE THE STATE'S OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES.

The Court's July 31, 2015 and August 5, 2015 orders in the above-captioned cases held that the Sheriffs were State agents for purposes of this case because they were "simply enforcing state law." [No. 5:14-cv-00369, DE 58; No. 5:15-cv-00097, DE 40]. Accordingly, the Court held that any attorneys' fees awarded against the Sheriffs "would be . . . paid by the State of North Carolina." *Id.*

The State of North Carolina has now moved to intervene in these cases. The Sheriffs believe this is appropriate (if not required) because it is the State, and not the Sheriffs, that would be responsible for paying any award of attorneys' fees.

In its motions to intervene, the State forecasts its opposition to Plaintiffs' motions for attorneys' fees on the grounds that: (1) Plaintiffs are not "prevailing parties" under 42 U.S.C. 1988; and (2) even if Plaintiffs are "prevailing parties," their proposed fee awards are excessive. In light of the Court's determination that the Sheriffs are State agents for purposes of this litigation, the Sheriffs concur with and incorporate the State's opposition to Plaintiffs' motions for attorneys' fees.

Furthermore, in their capacity as State agents, the Sheriffs concur with the State's request that it be given sufficient opportunity—up to 21 days after the entry of an order allowing intervention—to oppose Plaintiffs' motions for attorneys' fees.

CONCLUSION

For the foregoing reasons, Defendants Brindell B. Wilkins, Jr. and Donnie Harrison respectfully concur with and incorporate the State's opposition to Plaintiffs' motions for attorneys' fees.

Respectfully submitted the 21st day of October, 2015.

POYNER SPRUILL LLP

By: s/ Andrew H. Erteschik
Andrew H. Erteschik
N.C. State Bar No. 35269
aerteschik@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602-1801
Telephone: 919.783.2895
Facsimile: 919.783.1075

**COUNSEL FOR SHERIFF
BRINDELL B. WILKINS, JR. AND
SHERIFF DONNIE HARRISON**

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record as follows:

Camden R. Webb
Williams Mullen
301 Fayetteville St., Suite 1700
P. O. Box 1000
Raleigh, NC 27601
*Counsel for Plaintiff Kirsten Messmer
Local Rule 83.1 Counsel for
Plaintiffs Felicity M. Todd Veasey and
Second Amendment Foundation, Inc.*

Charles G. Whitehead
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Counsel for the State of North Carolina

Hal F. Askins
J. Joy Strickland
N.C. Dept. of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
*Counsel for Defendants Governor Pat
McCrory, Attorney General Roy
Cooper and Frank L. Perry*

David G. Sigale
Law Firm of David G. Sigale, P.C.
739 Roosevelt Road, Suite 304
Glen Ellyn, IL 60137
dsigale@sigalelaw.com
*Lead Counsel for Plaintiffs Felicity M.
Todd Veasey and Second Amendment
Foundation, Inc.*

This the 21st day of October, 2015.

s/ Andrew H. Erteschik
Andrew H. Erteschik